

REMARKS

This is a divisional application of a previously filed co-pending application which was filed on October 19, 2000, U.S. Serial No. 09/692,000, and it claims the benefit of and priority to said co-pending application .

Claims 1-16 were prosecuted in the above referenced now issued application and are cancelled in this application. Claim 19 has also been cancelled

Claims 38-49 are currently withdrawn pursuant to an Election/Restriction Requirement Response filed on February 15, 2005.

35 USC 103 Rejections

Claims 17-18, 20-26, 38-36, 50-51 have been rejected under 35 USC 103(a) as being unpatentable in view of Garcia (4,962,769 and in further view of Hayes (5,599,290).

Reconsideration of Claims 17-18, 20-26, 38-36, and 50-51 under 35 U.S.C.103(a) as being unpatentable in view of Garcia and in further view of Hayes is respectfully requested in light of the amendments and the arguments presented herein.

Claim 17 has been amended to make clear that the wound care and prevention portion is coupled peripherally to and independent of being embedded in the absorption portion of the instant invention. These structural differences are apparent, particularly in reference to the drawing Figs. 2 and 5 of Garcia compared to Figs. 7 and 9A, 9C and 9D of the instant invention. As noted in Garcia, Col. 4, Line 23, "the absorbent layer 11 utilizes a discrete bubble or cell array at 12..."

Independent claims 17, 32 and 50 have been amended to distinguish between Garcia and the present invention by claiming the wound care prevention portion is coupled peripherally to

and independent of being embedded in the absorption portion. Thus, with the claims now amended, it is clear that the primary reference Garcia should not be combined to support an obvious determination. Furthermore, so it would not have been obvious to one of ordinary skill in the art at the time the invention was made to modify Garcia based on Hayes et al.

Hayes et al. Teaches Away from the Instant Invention.

Hayes et al. (U.S. Patent No. 5,599,290) is not an appropriate prior art reference as it teaches away from the instant invention. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d. 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). MPEP 2141.02

The instant invention employs gas filled bubbles to support a target area. The instant invention supports a skin ulcer above an irritant surface of a bed or a bed sheet of the bed in which the user is confined. The instant invention is manifested by the use of connected air bubbles forming a generally flexible suspension sheet. (Specification at p. 4, line 5.)

Hayes et al., on the other hand, deals with protection from impact forces. Hayes et al. teaches that device rigidity determines the amount of energy absorbed and the magnitude of force produced by deformation of the device. A very compliant material, while generating low stress or pressure during compression, will also absorb little energy during deformation. (Col. 3, lines 26-30.) Hayes et al. dispels the use of a very compliant material, such as a flexible air cushion, because it would become highly pressurized and stiff to avoid bottoming out during impact. (Col. 3, lines 31-48.) Clearly, Hayes et al. teaches away from a support device with gas filled bubbles.

Claim 17 as amended now provides that this support device is for the care and prevention

of wounds on a target area of a user. It now requires a means for reducing pressure, friction and sheer that can irritate or cause ulcers resulting from prolonged contact between the target area of the user and a chaffing surface. As will be shown below, products made in accordance with the Hayes et al. patent use an expanding under pressure substance which inherently increases pressure, friction and shear.

The means for reducing pressure, friction and sheer of the instant invention has an array of removable cells forming a flexible sheet for suspending an area of the body of the user surrounding the target area. This limitation is neither disclosed nor taught by Hayes et al. nor the other reference cited.

One of the advantages of the instant invention as claimed in amended claim 17 is that it can be configured by the user or a care giver for specific wound sizes and shapes since cells can be selectably removed leaving a continuous peripheral support enclosure which works as a cooperating continuum of supporting cells. Hayes et al. teaches the use of a scissors to remove cells from the two possible arrangements (Figs. 9 and 10) in which the Hayes product might be supplied. (Col. 10, lines 44-45.) Examples of what may be produced from the embodiments of Hayes et al. Figs. 9 and 10 are shown in Fig. 11. (Col. 10, lines 64-66.) No continuous peripheral support enclosure is provided by Hayes et al.

Applicant's invention teaches a support device for a user with means for reducing pressure, friction and shear to a target area. Hayes et al. requires the use of dilatant material, which is a shear thickening material that increases in volume when its shape is changed. (See the definition of "dilatant", Dictionary of Scientific and Technical Terms, McGraw-Hill, Fourth Edition, 1989; and the definition of "dilatant fluids" from a web publication of the Provincial Government of

Saskatchewan, Canada.) A device, such as Hayes et al., employing a material that expands in response to pressure will not reduce pressure, friction or shear to the target area as is required in amended claim 17.

As noted above, Hayes et al. is not an appropriate prior art reference as it teaches away from the instant invention. Teachings of reference can be combined only if there is some suggestion or incentive to do so. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929,933 (Fed. Cir. 1984). Hayes et al. dispels the use of a very compliant material, such as a flexible air cushion, because it would become highly pressurized and stiff to avoid bottoming out during impact. (Col. 3, lines 31-48.) Thus, Hayes et al. teaches away from a support device with gas filled bubbles. Hayes et al. should not be combined with Garcia to add gas-filled bubbles, when Hayes et al., teaches away from the use of a flexible air cushion.

It is improper to merely pick and choose among individual elements of assorted prior art references to recreate the claimed invention. *Smithkline Diagnostic Inc. v. Helena Laboratories Corp.*, 859 F.2d 878, 8 U.S.P.Q.2d 1468 (Fed. Cir. 1988), on remand (ed text) 12 U.S.P.Q.2d 1375.

Given that independent claims 17, 32 and 50 have been amended to distinguish between Garcia and the present invention by claiming the wound care prevention portion is coupled peripherally to and independent of being embedded in the absorption portion. Thus, with the claims now amended, it is clear that the primary reference Garcia should not be combined to support an obvious determination. Furthermore, so it would not have been obvious to one of ordinary skill in the art at the time the invention was made to modify Garcia based on Hayes et al.,

which teaches away for the present invention. Dependent claims 18, 20-26, 28-31, 33-36 and 51 are preferred embodiments of the amended independent claims and are entitled to patentability on the same basis as said amended independent claims.

Based on the foregoing, applicant requests that Claims 17-18, 20-26, 28-36, and 50-51, as amended, be allowed.

Claims 27 and 37 have been rejected under 35 USC 103(a) as being unpatentable over Garcia/Hayes and further in view of Rollband (5,210,402). For the above reasons that Garcia is distinguishable from the present invention based on the claims as amended and that Hayes et al. teaches away for the instant invention, the combination of Garcia/Hayes and further in view of Rollband should not support a section 103(a) rejection of claims 27 and 37 as amended. Dependent claims 27 and 37 are preferred embodiments of the amended independent claims and are entitled to patentability on the same basis as said amended independent claims.

Reconsideration of Claims 27 and 37 under 35 U.S.C. 103(a) as being unpatentable in view of Garcia/Hayes and further in view of Rollband is respectfully requested in light of the amendments and the arguments presented herein.

Based on the foregoing, applicant requests that Claims 27 and 37, as amended, be allowed.

Claim 52 is rejected under 35 USC 103(a) as being unpatentable over Garcia/Hayes and further in view of Gallagher (3,468,311). For the reasons set forth above, Garcia is distinguishable from the present invention based on the claims as amended and Hayes et al.

teaches away for the instant invention, the combination of Garcia/Hayes and further in view of Gallagher should not support a section 103(a) rejection of claim 52 as amended. Moreover, dependent claim 52 is a preferred embodiment of the amended independent claims and is entitled to patentability on the same basis as said amended independent claims.

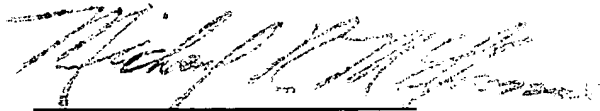
Reconsideration of Claim 52 under 35 U.S.C.103(a) as being unpatentable in view of Garcia/Hayes and further in view of Gallagher is respectfully requested in light of the amendments and the arguments presented herein.

Based on the foregoing, applicant requests that Claim 52, as amended, be allowed.

CONCLUSION

Applicant believes that all the claims presented in this application, as now amended, place the application in better condition for allowance. An allowance of the claims is requested.

Respectfully submitted,



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8/15/05

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